HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.NO. 25751 OF 2006

DATED: 13.12.2006

Between:

Anant Prasad L. Ganeriwal

… Petitioner

and

The Commissioner, Endowments Department,

Tilak Road, Hyderabad and others

… Respondents

HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.NO.25751 OF 2006

ORAL ORDER:

Heard Sri P. Yadagiri Rao, learned counsel for the petitioner and the learned Government Pleader for Endowments.

The petitioner impugns the order of the 1st respondent dated 30.8.2006 in R.P.No.7 of 2006 whereby the 1st respondent exercising *suo motu* jurisdiction under Section 92 of the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short 'the Act'), set aside the order of the 2nd respondent bearing Rc.No.A2/1015/2005 dated 23.8.2006.

Sri P. Yadagiri Rao, the learned counsel for the petitioner, does not impeach the validity of the 1st respondent's proceedings on the merits of the decision. What all is urged is that the 1st respondent has no revisional jurisdiction (*suo motu,* or on an application), under Section 92 of the Act, since as against the order of the 2nd respondent dated 23.8.2006, an appeal is provided under Section 90 of the Act to the same authority viz; the 1st respondent.

The 2nd respondent in his order dated 23.8.2006 nullified the trusteeship of respondents 3 to 8 herein, on the ground of irregularities in the taking of oath by these respondents and for failing to file affidavits (as required under the statutory rules) before entering upon the office of trustees of Sri Sitaram Maharaj Samsthan, Sitarambagh, Hyderabad.

On the admitted factual scenario, the respondents 3 to 8 did not prefer any appeals to the 1st respondent under Section 90 (1) (ii) of the Act though an appellate remedy lay to the 1st respondent against the order of the second respondent dated 23.8.2006 disqualifying these respondents from being the trustees of the endowment institution in question.

Section 92 of the Act to the extent relevant and material for the purposes of this writ petition reads as under:

> "**92. Power of the Commissioner to call for records and pass orders:-** (1) The Commissioner may either *suo motu* or on the application, call for and examine the record of any Deputy Commissioner or Assistant Commissioner, or of any other Officer subordinate to him or of any Executive Officer or any trustee of a charitable or religious institution or endowment, other than a math or specific endowment attached to a math in respect of any administrative or quasi-judicial decision taken or order passed under this Act, but not being a proceeding in respect of which a suit or an appeal or application, or reference to a Court is provided by this Act to satisfy himself as to the correctness, legality or propriety of such decision or order taken or passed, and if in any case, it appears to the Commissioner that such decision or order should be modified, annulled, reversed or remitted for reconsideration, he may pass orders accordingly."

There are rival interpretations placed for the consideration of this court on the

provisions of Section 92 (1); one by the learned counsel for the petitioner and other by the learned Government Pleader for Endowments. The combative interpretations are urged in respect of the phrase in Section 92, which excludes the power and jurisdiction of the 1st respondent under Section 92 of the Act.

On behalf of the petitioner, it is contended that the power under Section 92 is not available agiainst any proceedings in respect of which " suit or an appeal or application, or reference to a Court is provided by this Act". This phrase, it is contended by the petitioner, disables the exercise of jurisdiction by the 1st respondent wherever an appellate remedy is provided by the Act, not only to a Court but also to any other authority. The contention is that since in respect of an order of the 2nd respondent (such as the one dated 23.8.2006 passed in purported exercise of the jurisdiction under Section 28 (1) (e) of the Act), an appellate remedy is provided to the 1st respondent under Section 90 (1) (ii), the curative jurisdiction of the 1st respondent under Section 92 is excluded.

Per contra, the learned Government Pleader for Endowments submits that the jurisdiction under Section 92 is excluded only with regard to proceedings in respect of which either a suit, appeal, application or reference is provided by this Act, to a Court (emphasis). The expression "Court" is defined in Section 2 (8) of the Act as under:

"Court' means,--

i. in relation to a charitable or religious institution or endowment situated within the limits of the Municipal Corporation of Hyderabad, the City Civil Court, Hyderabad;

ii. in relation to a charitable or religious institution or endowment situated elsewhere in the State, the Sub-ordinate Judge's Court having jurisdiction over the area in which the said institution or endowment is situate or, if there is no such Court, the District Court having jurisdiction over such area;

iii. in relation to a specific endowment attached to a charitable or religious institution, the Court which would have jurisdiction as aforesaid in relation to such charitable or religious institution;

iv. in relation to a specific endowment attached to two or more such institutions, any Court which would have jurisdiction as aforesaid in relation to either all or any of such institutions."

Clearly, the 1st respondent exercising appellate jurisdiction under Section 90 is not a Court within the meaning of the expression as defined in Section 2 (8) of the Act.

In the considered view of this court, the contention urged on behalf of the writ petitioner does not commend acceptance. On a true and fair consideration of the provisions of Section 92 of the Act, it appears that a reserve curative jurisdiction, quasi judicial in nature, is consecrated to the 1st respondent to deal with a situation arising out of any quasi judicial or administrative decision taken or order passed under the Act by a Deputy Commissioner, Assistant Commissioner or any Officer subordinate to the Commissioner or of any Executive Officer or any trustee of a charitable or religious institution and endowment, other than a math or a specific

endowment attached to a math. The legislative intent underlying the conferral of such curative quasi judicial jurisdiction on the Commissioner appears to be to empower the Commissioner reach out and undo an order which may be palpably incorrect, illegal or improper and would in circumstances effect the administrative or managerial integrity of a religious or endowment institution, which it is the overall concern of the Commissioner of Endowments under the generic scheme of the Act. The jurisdiction conferred on the 1st respondent is an exclusive and non-obstante jurisdiction unhindered by the existence of an appellate remedy to other authorities under the Act, except where an appeal, suit, application or reference is provided to a Court. The legislative intent appears to be to restrict the jurisdiction of the Commissioner under Section 92 of the Act, only to cases where a suit, appeal, application or reference is provided to a Court (an independent, insulated, forensically trained and hierarchically accountable body) and not to other authorities under the Act, including the Commissioner himself; as for instance under Section 90 of the Act.

The contention urged on behalf of the petitioner that each of the remedies of a suit, an appeal, an application or a reference must be disjunctively construed and the bar of jurisdiction, of the Commissioner under Section 92 of the Act should be understood as operating wherever remedies of a suit, appeal or application lie and a reference to a court is provided under the Act, is an invitation to a strained interpretation of the provisions of the Act.

On a grammatical interpretation of the provisions of the Act, the plain meaning of the words “in respect of which a suit or an appeal or application, or reference to a Court is provided by this Act” in Section 92 do not justify such a construction. There is no ambiguity in the language nor does the literal interpretation of the words lead to any absurdity or mischief, justifying invocation of purposive principles of construction.

For the aforesaid reasons and on the analysis above, the exercise of jurisdiction by the 1st respondent in *suo motu* entertaining R.P.No.7 of 2006, leading to the impugned order dated 30.8.2006 suffers from no jurisdictional infirmity, warranting judicial review. As the order impugned is not impeached on substantive merits by the petitioner, no other questions arise for adjudication.

The writ petition is without merits and is accordingly dismissed at the admission stage. There shall be no order as to costs.

GODA RAGHURAM, J

Date: 13.12.2006

CVM